IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

RPFC.No. 25 of 2005()

MC.79/2003 of FAMILY COURT, KOZHIKODE

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PETITIONER/RESPONDENT

E.HARIDAS,S/O.KANNAN,AGED 46 YEARS,
SREE HARI,NADUVILAKANDY PARAMBA,
KOTTOOLI,P.O.MEDICALCOLLEGE,KOZHIKODE.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA

RESPONDENTS: RESPONDENT AND STATE

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1. JEEJA BAI,D/O.DAMODHARAN,
ARUN MAMBAYAKATTU PARAMBA,GOLF LINK ROAD,
CHEVAYOOR P.O.,KOZHIKODE.

2. HARISHMA,AGED 13,(MINOR REPRESENTED BY
1ST RESPONDENT GUARDIAN), -DO-

3. VISHUN,AGED 10,(MINOR,REPRSENTED BY THE
1ST RESPONDENT GUARDIAN) -DO-

4. STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.D.BABU
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

R.P.(F.C.) No. 25 OF 2005 E

Dated this the 13th day of September, 2007

O R D E R

The revision petitioner, who was the husband of the first respondent and father of respondents 2 and 3, challenges the order dated 5.10.04 passed by the Family Court, Kozhikode in M.C.No.79/03.

2. The case of the respondents herein in the said M.C. can be summarized as follows:-

The marriage between the 1st petitioner and the respondent was solemnized on 29.1.1989 as per the customs and ceremonies of the Hindu community. After the marriage, the 1st petitioner and the respondent resided together in the matrimonial home. Petitioners 2 and 3 are the two children born in that wedlock. At the time of marriage, the 1st petitioner was given 46 sovereigns of gold ornaments. During her stay in the matrimonial home, the 1st petitioner came to know that the house in which they were residing together did not belong to the respondent. The respondent demanded 28 sovereigns of gold ornaments for purchasing a house of his own. A sum of Rs.50,000/- was also given by the

father of the 1st petitioner and a house was purchased at Karaparamba in the name of the 1st petitioner. After child's birth, she was taken to her house. During their stay, the respondent behaved cruelly towards her and the children as well. He took to drinking and started becoming a spend thrift. He used to physically assault her. She was suffering in silence to keep the matrimonial bond intact. He sold the house at Karaparamba and purchased another house at Kottooli in the joint names of the 1st petitioner and himself and they resided together in that house till April 1999. During their stay in that house also, she was brutally manhandled by the respondent for silly reasons. He used to harass her demanding more money from her house. On 16.10.1995, she was taken to the Government Hospital, Nilambur, consequent on the injuries sustained by her as a result of the assault by the respondent. The police registered a case against him. Subsequently, due to the intervention of mediators, the respondent promised to accept the 1st petitioner and to behave properly with her. She, therefore, withdrew the complaint and started cohabitation with the respondent. He, however, did not change his habits. He started beating her and the children. He

harassed her and abused her in filthy language. She was physically and mentally tortured. He even compelled her to write on a piece of paper that she was having illicit relations with others. Subsequently, on 5.4.1999 she shifted to a house purchased by her parents utilizing their retirement benefits. Her children also were with her. The respondent came there also during late hours at night after getting intoxicated and started assaulting her. As the petitioners were totally neglected by the respondent, they were forced to file M.C.168/2000 before the trial court seeking maintenance. On getting notice, the respondent appeared and pretended that he wanted to look after his wife and children and took them with him to Maharani Hotel and locked the children in a room and insisted the 1st petitioner to withdraw the petition. It was on the promise given by the respondent that he will look after the children properly that she withdrew the petition and started cohabiting with the respondent. But he soon started torturing the 1st petitioner both mentally and physically after coming home intoxicated. He was having illicit relationship with other women of ill repute and whenever she questioned him in this behalf, he used to mercilessly beat her. She, therefore, preferred a complaint

before the Women's Cell and other women organizations. On coming to know all these, the respondent came and beat her with a wooden stick causing bleeding injuries on her nose. She called the police over telephone and the police took the respondent to custody. The 1st petitioner was taken to the Medical College Hospital where she was treated as an out patient. She then took shelter in her cousin brother's house. The 1st petitioner came to know that the respondent had brought women of ill reputation to the house at Kottooli and was residing there. The 1st petitioner and her children took shelter in the house of one Bhagyalakshmi teacher, who is working at Presentation School, Chevayur. They are living at her mercy. On 18.12.02, when the 1st petitioner went to the house at Kottooli, the respondent did not permit her to enter that house. He caught hold of her by the hair and kicked her. The 1st petitioner is not having any source of income except for the rental income from the building. The respondent is conducting a finance company and earning Rs.20,000/- per month. He is also having a bus and getting a monthly income of Rs.30,000/- from the bus. He has also landed property fetching Rs.5,000/- per month. The petitioners require a sum of Rs.2,000/- each as maintenance.

Hence the petition for maintenance.

3. The application for maintenance was opposed by the respondent contenting, inter alia, as follows:-

The marriage as well as the birth of two children in the wedlock is admitted. But the allegation regarding cruelty is denied. The 1st petitioner is mentally ill. She always entertains a feeling that somebody is going to attack her. She used to say that her late grandfather is trying to suck the blood of her child. For her mental illness, she was treated with homoeo medicines, Ayurvedic medicines and Allopathic medicines. But she did not recover from her illness. Since she was mentally ill, she used to assault this respondent. But this respondent treated her with love and affection thinking that her misbehaviour was on account of her mental illness. After the birth of the second child, there was no physical relationship between the spouses. He was denied sex by her saying that he was trying to suck her blood. The allegation that 46 sovereigns of gold ornaments were given at the time marriage, etc. are false. He has not appropriated her gold ornaments or money. The allegation that the house was purchased with 28 sovereigns belonging to her and that another

sum of Rs.50,000/- was given by her father is absolutely false. The building at Karaparamba was purchased by him with his own savings. The allegation of cruelty is also equally false. Since she had a feeling that her illness was because of her residence in that building, that property was sold and another building was purchased at Kottooli. The allegation that the respondent demanded money from the 1st petitioner is false. Likewise, the allegation of assault is also false. Her further case that she was assaulted by this respondent on 16.10.1995 and she was admitted for treatment and the police had registered a case against this respondent is also false. There was no mediation or any withdrawal of the complaint as alleged. The allegation that he behaved cruelly towards the children is also not correct. Equally false is her allegation that he compelled her to write in a paper that she was having illicit relationship. In the absence of her parents, the 1st petitioner picked quarrels with him and tried to assault him. In the night of 22.3.2005 while they were sleeping, he was aroused from his sleep to find her pouring kerosene on the body of herself and the children. M.C.168/00 filed by her was disposed of accepting the joint statement as per which he took her home. The

allegation that he had taken them to Maharani Hotel under the pretext of giving food to them and compelled the 1st petitioner to withdraw the case is absolutely false. The allegation that he has illicit relationship with other women of ill reputation is absolutely false. He did not assault her or drive her away from his house as alleged. Her further allegation that she came to the house on 18.12.2002 and was not allowed to enter the house and was assaulted by him is also false. She is residing separately from this respondent under the influence of her father. Even then, he is ready to provide maintenance to the children. The allegation that he is getting an amount of Rs.20,000/- from business, Rs.30,000/- from the bus service, etc. are absolutely false. He is just an employee of a finance company and getting a monthly income of Rs.3,000/-. It is learnt that the residential building near the NGO quarters has been let out by the 1st petitioner for a rent for Rs.3,000/- per month and she is collecting the said rent. She is, therefore, able to maintain herself. The petition is filed without any bona fides and may be dismissed.

4. On the side of the 1st petitioner wife, she examined herself as PW1 and got marked 6 documents as Exts.A1 to A6.

On the side of the respondent husband, he examined himself as RW1 and examined two other witnesses as RWs 2 and 3.

5. The Family Court after trial, as per order dated 5.10.04 allowed the M.C. in part directing the revision petitioner to pay a monthly allowance at the rate of Rs.1,750/- each to petitioners 2 and 3 and Rs.1,500/- per month to the 1st petitioner with effect from 4.3.03 i.e., the date of petition. It is the said order which is assailed in this revision.

6. I heard Advocate Sri.K.Ramachandran, the learned counsel for the revision petitioner and Advocate Sri.K.D. Babu, the learned counsel appearing for the respondents.

ARGUMENTS IN SUPPORT OF THE IMPUGNED ORDER

7. Advocate Sri.K.D. Babu, the learned counsel appearing for the respondents, made the following submissions before me in support of the impugned order:-

Eventhough the 1st respondent herein did not disclose the rental income derived by her in the petition for maintenance, when examined as PW1 she has revealed the rental income as Rs.1,000/- per month. The revision petitioner examined as RW1 has admitted that he was owning a bus having registration

No.KRZ 6928 but would say that he is not having any bus service now. Hence the burden was on him to show that at present he is not having ownership over the bus. He has not discharged the said burden and therefore it could be presumed that the bus is still in his ownership and possession. Ext.A3 is a greeting card sent by him to his daughter. It shows that he is doing business by name “Hari's Business Centre” in K.P.Building at G.H. Road. The said card also shows his telephone numbers both at his office and at his residence as well as mobile number. From this, it could be inferred that he is running a lucrative business. Ext.A1 is a letter admittedly written by him to his wife. It is written in his letter pad wherein it is printed that he is doing financial arrangements for bus, lorry, auto, jeep, etc. and is running the said business in K.P.Building at Kozhikode. According to the claimants, the monthly income of the revision petitioner is Rs.55,000/-. Hence, it is idle for the revision petitioner to contend that the quantum of maintenance fixed by the court below is excessive. Apart from ill treating the 1st respondent, the revision petitioner has been having illicit relationship with other women justifying the claim for separate maintenance The impugned order does not suffer from any

illegality.

JUDICIAL EVALUATION

8. While I find sufficient justification on the part of the wife to claim separate maintenance from the revision petitioner, I do not endorse the submissions made on behalf of the 1st respondent in support of the impugned order with regard to the quantum of maintenance. The maintenance which was claimed for the wife and two children was at the rate of Rs.2,000/- per month for each of them. In the petition for maintenance just above paragraph 12 thereof, she has admitted that she is getting rental income from the building owned by her but she has not disclosed the amount of rental income received by her. In paragraph 12 of the application for maintenance, she would allege that the respondent is running a finance company, bus service, etc. and is having immovable properties altogether fetching more than Rs.50,000/- per month. Since she did not reveal the actual rental income received by her, the revision petitioner had filed CMP.No.374/04 on 4.3.04 before the Family Court calling upon her to produce the rent receipts or their counterfoil to indicate the rental income received by her. Eventhough the said application was allowed by the Family Court,

she did not produce the counterfoil or such other documents in her possession to prove her rental income. Except the ipsi dixit of PW1 from the witness box that the income derived by her by way of rent is Rs.1,000/- per month, the same was not supported by any reliable material. The 1st respondent who alleged in her petition that the revision petitioner is running a finance company, bus service, etc. frankly confessed when examined as PW1 that he is only a financing agent of a Sait. The stand of the revision petitioner right from his counter affidavit to the application for maintenance was that he was only a collecting agent of a financier in Tamil Nadu and his monthly income was only Rs.3,000/-. In this revision, as per Crl.M.A.No.4215/05 the revision petitioner has produced his salary certificate dated 16.3.05 obtained from the financier at Madras to the effect that his salary is Rs.3,000/- per month from 28.10.96 onwards. This, coupled with the admission of PW1 that her husband is only an agent of a financier strengthens the case of the revision petitioner.

9. It is true that the revision petitioner has admitted that he was running a stage carriage bus. But according to him he has stopped the said bus long back and he is no more the owner. It is

well settled that in an application for maintenance the burden to prove the income of the respondent is on the applicant. Subsisting permits or other documents could have been produced or got summoned from the respective government departments to show that the husband continues to be the owner of the bus and is still running the bus service. So is the case with the alleged financing business and immovable properties. No such attempt was made. If the revision petitioner was in such affluent circumstances as the 1st respondent would allege, he would not have taken up the job of a collecting agent at Kozhikode of a financier at Madras. As PW1 she has admitted that he had been paying her maintenance according to his means. Considering all these aspects, I am of the view that the direction by the Family Court below to pay Rs.1,500/- per month to the wife and Rs.1,750/- per month to each of the children, totalling to a monthly strain of Rs.5,000/- per month on his income was very much on the higher side. Hence, considering the totality of the circumstances, I am of the view that a sum of Rs.1,000/- each to the wife and two children would be a fair and reasonable allowance per month. Accordingly, the quantum fixed by the court

below is modified and instead of Rs.1,750/- each to the two children and Rs.1,500/- to the wife, each of them will be entitled to a sum of Rs.1,000/- (Rupees one thousand only) totalling to Rs.3,000/- (Rupees three thousand only) in all from the date of petition, namely, 4.3.03. The revision petitioner shall deposit before the Family Court, the arrears of maintenance due as on 4.9.07 within two months from today. This will be over and above his liability for future maintenance at the above modified rate until the children attain the age of 18 years and the wife remains unmarried.

This revision is thus disposed of modifying the quantum of maintenance as above.

(V. RAMKUMAR, JUDGE)

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